No. 80-1502

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In the Supreme Court of the United States

OCTOBER TERM, A.D. 1980

STANLEY FISHMAN, CHRIST A. CHRIST, OLIVER McCRACKEN, WILLIS RARDIN, KERN DOERNER and KENNETH LUMB,

Petitioners,

vs.

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

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QUESTIONS PRESENTED FOR REVIEW

The first question presented for review by the judgment order of the Board of Trustees of The Teachers' Retirement System of the State of Illinois (hereinafter referred to as "Board") and affirmed on appeal, is whether the decision must be reversed because the pertinent sections of the statute on which the Board based denial of the right to purchase retirement credits (Article 16, Chapter 108½, Illinois Revised Statutes [1977]) and/or the Board's application of those sections, constitute an unreasonable and unconstitutional classification in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution. The second issue, which is related to the initial question, is whether the denial of the right to purchase credits is unconstitutionally discriminatory as violating the fundamental right to interstate travel.

PARTIES

The following is a list of all parties involved in this litigation:

A. Petitioners:

1. Stanley Fishman;
2. Christ A. Christ;
3. Oliver McCracken;
4. Willis Rardin;
5. Kern Doerner; and
6. Kenneth Lumb.

B. Respondents:

1. Teachers' Retirement System of the State of Illinois;

2. Board of Trustees of the Teachers' Retirement System of the State of Illinois;

3. Joseph M. Cronin, Alex Naidenovich, Vivian L. Najim, Joseph M. Pasteris, Judith Fitch, John Barr, Don S. Browning and Bob Daniels, members or officers of the Board of Trustees of the Teachers' Retirement System of the State of Illinois; and

4. Roy Baker, Director of the Teachers' Retirement System of the State of Illinois.

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TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

Stanley Fishman, et al., petitioners, pray that a writ of certiorari issue to review the judgment of the Illinois Supreme Court entered in the above entitled cause on December 2, 1980, denying petitioners' request for leave to appeal the decision of the Illinois Appellate Court affirming the decisions of the Circuit Court for the Seventh Judicial Circuit of Illinois, Sangamon County, Springfield, Illinois and the Board of Trustees of the Teachers' Retirement System of the State of Illinois.

OPINIONS RENDERED IN LOWER COURTS

A. Decision of Board of Trustees of the Teachers' Retirement System of the State of Illinois—Unpublished. (Appendix A)

B. Memorandum of Opinion rendered in the Circuit Court For The Seventh Judicial Circuit of Illinois, Sangamon County, Springfield, Illinois in Case Numbers 212-79 and 213-79—Unpublished. (Appendix B)

C. Opinion of State of Illinois Appellate Court, Fourth District, Docket Number 16101. Reported in 86 Ill. App.3d 649, 41 Ill. Dec. 767, 408 N.E.2d 113 (4th Dist., 1980). (Appendix C)

D. Decision of Illinois Supreme Court in Docket Number 53946—Unpublished. (Appendix D)

JURISDICTIONAL GROUNDS

A. On December 2, 1980 the Illinois Supreme Court denied the request of the petitioners for leave to appeal from the decision of the Illinois Appellate Court, Fourth District.

B. 28 U.S.C. §1257, 1964 Ed. is the statutory provision conferring jurisdiction on this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS

See Appendix E

STATEMENT OF THE CASE

The Teachers' Retirement System of the State of Illinois (hereinafter referred to as "Teachers' Retirement System") includes as members all teachers and administrators in the Illinois public school system, excluding those employed in Chicago public schools. This Teachers' Re-

tirement System provides a method by which its members obtain credit for services rendered as teachers [as defined in Ch. 108½, §16-106, Ill. Rev. Stats. (1977), as amended] toward an accumulation of retirement credits, which accumulation is the determining factor in setting the time and amount of distribution of retirement benefits to those members. Petitioners have obtained credits for services rendered as teachers in Illinois such that they are entitled to certain of the retirement benefits prescribed in the statute.

The statute, however, provides for the purchase of additional credits for such experiences as teaching in other states and serving in the General Assembly. The following section, similar to the statute's other additional credit sections, provides military service credits for:

> "Any periods during times of hostilities or a declared national emergency spent in service with the military or naval forces of the United States or in educational programs that prepare for return to teaching sponsored by the federal government for persons discharged from military or naval service and, if a member returns to teaching service within one calendar year after discharge or after the completion of the educational program, the further period of not to exceed one calendar year thereafter between time spent in military or naval service or in such educational programs and the return to employment as a teacher, for which the member makes the required payments, as of the date such payments are completed." [Ill. Rev. Stats., Ch. 108½, §16-127(5) (1977)].

Accordingly, under this section a member would be entitled to a greater retirement benefit if permitted to purchase credits for time spent in the military service. The Board of Trustees of the Teachers' Retirement System (hereinafter referred to as "Board"), however, has denied this right to approximately nine thousand members

by limiting the extension of this section and Ch. 108½, §16-127(6), Ill. Rev. Stats. (1977), to those members who were teachers in Illinois both immediately before and after their military service. Petitioners are among this group which the Board has so precluded from purchasing credits.

The factual backgrounds of each of the six named petitioners' serving as a basis for the petitions before the Board are, of course, different; however, for the purpose of the issues presented, those backgrounds are substantially similar, and, in fact, are identical to the backgrounds of those individuals to whom the credits have been extended, with variations only in time and place.

Petitioner Oliver McCracken enlisted in 1951 while a resident of Missouri and was discharged in 1954; prior to undertaking military service he was a teacher in Missouri. In 1958 he became a teacher in Illinois and a member of the Teachers' Retirement System and to this date remains in that capacity. (C-51 through 54)

Kern L. Doerner was drafted in 1953 while a resident of Illinois and was discharged in 1955. Subsequently he became a member of the Teachers' Retirement System. (C-42)

The educational career of Willis C. Rardin, an Illinois resident, was interrupted in 1942 by World War II when drafted in his junior year at Eastern Illinois State Teachers College. Discharged from the Army in 1946, he returned to Illinois to complete his education. Immediately after graduating in 1947, he accepted his initial teaching position in the Libertyville, Illinois Public School System and remained in that school system until retiring in 1978. (C-120, 121)

C. A. Christ accepted his nation's call during World War II and enlisted in the Navy in 1942 while attending

college in Kansas. Upon discharge he returned to Kansas to complete his education and to begin his teaching career. In 1962 he accepted a school administrative position in Lyons, Illinois and became a member of the Teachers' Retirement System. (C-118, 119)

Kenneth W. Lumb enlisted in the military service in 1955 while an Illinois resident. The Korean War had disrupted his education and upon discharge in 1959 he returned to Illinois to complete college at Northern Illinois University. Since graduating in 1962, he has been a teacher in Illinois. (C-42)

The teaching career of Stanley Fishman, an Illinois resident, was interrupted in 1954 when drafted immediately after completing his college education. He has been a teacher in Illinois and a member of the Teachers' Retirement System continuously since his 1956 discharge. (C-59 through 61)

The similarity in issues presented in the petitions of each petitioner concerns his right to purchase retirement credits in the Teachers' Retirement System for periods spent in the military service. Each of the six named petitioners is currently an active or retired member of the Teachers' Retirement System who has served in the United States military forces. None of these individuals, however, was a member of the System immediately before the time at which he entered the military, although each became a member after his term in the military. Accordingly, these individuals, on behalf of themselves and others similarly situated, petitioned the Board requesting the right to purchase retirement credits for periods spent in the military in the same manner as accorded those individuals who were members of the Teachers' Retirement System both prior and subsequent to their military service, or in the

manner in which teachers who taught in other states prior to coming to Illinois are entitled to purchase credits. (C-66 through C-118) The Board denied that request, holding that under its interpretation of Sections 16-106, 16-127(5) and (6) and 16-128, Chapter 108½, Illinois Revised Statutes (1977), to be entitled to purchase credits for the period encompassing his military service, an individual had to be a member of the Teachers' Retirement System both before and after that term of service. (C-123 through C-125)

The decision of the Board was appealed to the Circuit Court for the Seventh Judicial Circuit, Sangamon County, Illinois, premised on the same equal protection argument. The Circuit Court denied class certification and affirmed the Board's decision. This judgment was then appealed to the Illinois Appellate Court which, with apparent but misplaced deference to the State budget, failed to discern an equal protection violation. A petition for leave to appeal to the Illinois Supreme Court was denied, thus avoiding further consideration of the equal protection issue in the State of Illinois and leaving the petitioners with the exclusive remedy of appealing to the Federal Judiciary to right the unconstitutional discrimination practiced by the State of Illinois.

ARGUMENT IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

A.

The action of both the Illinois Appellate Court and Illinois Supreme Court in this case has produced a question under the Federal Constitution which is one of first impression before this Court. The issue resulting from the decision of the Illinois reviewing courts is whether Chapter 108½, §16 and particularly §§16-127(5) and (6), Illinois Revised Statutes (1977) and/or its application violates the Fourteenth Amendment to the United States Constitution.

Before the Board, the Circuit Court, and both the Appellate Court and the Illinois Supreme Court, petitioners asserted that the statute in question violates equal protection because it produces a discriminatory classification which is not rationally related to the purpose of the Legislature in extending military service retirement benefits to teachers. This equal protection violation is apparent upon an examination of the statute and the factual background serving as a basis for the assertion of unconstitutional discrimination and raises such a substantial and important question of federal law under the Constitution, which has not been decided by this Court, as to mandate granting this petition for writ of certiorari.

The substantive constitutional arguments supporting this petition are two-fold. First, the petitioners assert that the classification excluding those who were not Illinois teachers prior to serving in the military is unconstitutionally discriminatory, in particular to those who were Illinois residents at the time they enlisted. Second, as to those individuals who resided or taught in other states prior to

serving in the military, petitioners assert that such a discrimination infringes on the fundamental right to interstate travel.

B.

To discern whether the statute in question as administered and interpreted by the Board violates the constitutional mandate, the legislative purpose must first be ascertained. The purpose of a teacher's pension system is to improve the educational system by better compensating teachers and rewarding them for faithful and continued service, thus making such service more attractive to qualified people. (78 CJS, Schools, Sec. 231) The pension therefore serves as an incentive to encourage qualified people to become and remain teachers in the state public school system. The section of the pension statute in question provides for a secondary purpose which also must be considered. That secondary purpose is to benefit veterans who have served their country in a time of need. The purpose of veterans benefit legislation is to promote and encourage patriotism, reward veterans and place a premium on military service. [See *People ex rel. Sellers* v. *Brady*, 262 Ill. 576 (1914) and *People ex rel. Jendrick* v. *Allman*, 396 Ill. 35 (1947)]

Given this two-fold legislative purpose, the statute must then be examined to determine whether an equal protection violation has occurred. The nature of equal protection is premised upon classification and its relation to the legislative purpose. That is, a classification drawn by the legislature must bear a rational relation to the evil to be remedied and the purpose to be attained by the particular statute; otherwise the classification will be deemed arbitrary and in violation of the constitutional guarantee of equal protection under the law. [*Begich* v. *Industrial Commis-*

sion, 42 Ill.2d 32, 245 N.E.2d 457 (1969)] Therefore, the issue becomes: Does the classification of those who were Illinois teachers before entering military service, as opposed to those who were not Illinois teachers before entering military service, bear a reasonable relationship to the two-fold legislative goal of obtaining and retaining qualified teachers and providing them less incentive to leave for more remunerative positions and of rewarding and benefitting veterans who have patriotically served their nation?

Applying the rational relationship standard to the legislative purposes of obtaining and retaining qualified personnel and benefitting veterans makes clear that the equal protection clause mandates petitioners' rights to purchase credits. Obviously, denial of military service credits to teachers who did not teach in Illinois prior to entering the military is an arbitrary and unreasonable classification not rationally furthering the legislature's purpose in enacting the pension law and providing for veterans' benefits.

Each individual involved in this matter is a member of the Teachers' Retirement System who did not teach in Illinois before entering the military. Included among the six named petitioners are (a) teachers, most of whom were Illinois residents, who performed military service before entering the teaching profession, (b) persons who taught in states other than Illinois before entering military service, and (c) Illinois residents who were students in Illinois before entering the military. The military service obligation required by the nation not only interrupted teaching careers of those who taught in Illinois at the time of induction but similarly disrupted all the petitioners' careers or education. No valid reason exists for distinguishing petitioners from those teachers who taught in

Illinois before entering military service; yet that is the only difference upon which the classificatien is based. Such a classification does not serve to induce qualified teachers to come to Illinois, nor does it deter from leaving this state those members of the class to whom the military service credits are not extended but who are currently teaching in Illinois. This unconstitutional abridgement of the petitioners' right to equal protection of the laws, practiced by the State of Illinois and, of course, not recognized as unconstitutionally discriminatory by the courts of that State, can only be remedied by granting this petition.

In addition, such a classification does not serve the purpose of benefitting veterans who served their country in time of need because it premises benefits not on being an Illinois resident (which restriction would permit four of the petitioners to purchase credits) but requires an individual to have taught in Illinois before entering the military.

Assuming that a petitioner served for three years in the military, in order to receive the same retirement benefits, he must work three years longer than a similarly situated colleague who had the fortune to obtain a teaching job before being drafted. Moreover, because the Teachers' Retirement System provides for mandatory retirement at age seventy, the petitioner may never be able to achieve the same retirement credits as his colleague. [§16-132, Ch. 108½, Ill. Rev. Stats. (1977)]. The inequities produced by such a classification can be illustrated by the following example:

> Petitioner and a colleague, both of whom are Illinois residents, graduate from Illinois State Teachers' College in June, 1942, with degrees in education. Both obtain contracts to begin teaching in September, 1942.

> The petitioner, however, is drafted into the army in August, 1942. He serves during World War II, is discharged in January, 1946, and begins teaching in Illinois. His colleague begins teaching in September, 1942 and is drafted in December, 1942. He serves until his discharge in January, 1946 when he once again begins teaching. Both retire in 1972.

If denied the opportunity to purchase credits for his four years in the military, the petitioner will have twenty-six years of creditable service whereas his colleague will have accumulated thirty years; the latter individual will, accordingly, receive a greater retirement benefit. The only difference between the two is that due to the vagaries of the draft boards, the petitioner was required (no voluntary election was provided by the federal government at that time) to serve in the military before beginning his teaching career while his colleague was not similarly compelled.

To preclude such a petitioner from purchasing retirement credits for the period he served in the military is an unreasonable and arbitrary classification which serves to deny equal protection of the laws and places him at a substantial and discriminatory disadvantage. The result is to provide him with lesser funds than his associate to supply the necessities of life for himself and his family upon retirement. Inflicting such a penalty is certainly not what the country contemplated when requiring its men to serve in the military.

Logic dictates that the purpose of the pension system is to improve the educational system by better compensating teachers and rewarding them for faithful and continued service; however, the product of this inducement is to make the system more attractive to qualified people. The Illinois Supreme Court recognized this purpose as early as 1916

in the case of *People ex rel. Kroner* v. *Abbott*, 274 Ill. 380, 113 N.E. 696 (1916), wherein Justice Carter stated the pension system served as an inducement:

> ". . . by encouraging competent employees to remain in the service, and by retiring from public service those who have become incapacitated from performing the duties as well as they might be performed by younger or more vigorous men." (274 Ill. at page 385)

> ". . . 'But the primary object in all such bounties is not the private but the public interest. To show gratitude for meritorious public services in the army and navy by liberal provision for those who have performed them is not only proper in itself, but it may reasonably be expected to have a powerful influence in inciting others to self-denying, faithful and courageous services in the future, when the government, which is so ready to be generous as well as just, shall have need of their assistance'." (274 Ill. at page 388)

Thus, a pension system rewards experience, continuity and loyalty in order to secure the employment of qualified individuals. The educational system, through such things as pension plans, seeks to induce teachers who have recently completed their education to join the profession in lieu of rejecting teaching for other governmental service or more remunerative private industry. Additionally, the pension system encourages other individuals who already may have teaching experience to join or remain in the Teachers' Retirement System.

Another aspect upon which the Court in *Kroner* touched is the retirement of older employees thus making room for younger teachers. In the instant case, granting the right to purchase military service credits to petitioners and the other approximately 9,000 similarly situated members of the Teachers' Retirement System would enable them to

retire earlier than permitted under the current statutory application. Thus, added cost to the State, if any necessary, to finance the military service retirement credits will be more than offset by the substitution of new lower salaried teachers for the older highly compensated teachers who, with the extension of the credits, would be permitted to retire. In addition, as Justice Carter stated, a valuable purpose is served because the teaching duties could be performed by "younger or more vigorous" teachers.

The second aspect of the two-fold purpose pertains to the military service credit. The parties agree that the purpose of veteran's benefits legislation is to rehabilitate the veteran whose normal life style has been interrupted, to compensate him for the economic disruption to his career and to reward him for his patriotic service to the nation in a time of need.

In *Rios* v. *Dillman,* 499 F.2d 329 (C.A. 5th, 1974), the Court of Appeals related the principal objectives of veteran's benefits legislation as follows:

> ". . . (1) to recognize that the experience, discipline, and loyalty that veterans gain in military service are conducive to the better performance of public duties; (2) to encourage citizens to serve their country in time of war and to reward those who, either involuntarily or through enlistment, did so; and (3) to aid in the rehabilitation and location of the veteran whose normal life style has been disrupted by military service." (499 F.2d at page 332)

Similarly, in a case analogous to that at bar, a New York statute was declared unconstitutional because it extended civil service veteran's preference only to those individuals who were residents of the state prior to entering the military, thus excluding aliens who resided in New

York before their terms of military service. The District Court therein explained the purpose of veteran's benefits legislation in the following fashion:

> "The veterans hiring preference has been justified as a measure designed to reward veterans for the sacrifice of military service, to ease their transition from military to civilian life, to encourage patriotic conduct and to attract loyal and well-disciplined people to civil service employment. See, Personnel Administrator of Massachusetts v. Feeney, ... U.S. ....., 99 S.Ct. 2282, 60 L.Ed.2d 870 (1979)." [Andrade v. Nadel, 477 F.Supp. 1275 at 1278 (S.D., N.Y., 1979)].

Thus, the purpose of military service credits is to compensate for disrupting normal life style, reward patriotic service and rehabilitate by recognizing that experience, loyalty and discipline obtained in the military are conducive to public employment.

The effect of Chapter 108½, §16-127(5) Ill. Rev. Stats., (1977) must be examined in light of this two-fold purpose. The statute, or its application as illustrated in the example outlined above, has produced two classes by excluding certain members of the Teachers' Retirement System from the group to which the right to purchase military service retirement credits has been extended. According to the Board's interpretation, in order to obtain the right to purchase these credits it is not sufficient to be an Illinois resident prior and subsequent to military service, which requirement could be related to a legitimate state purpose, but rather a member must be a teacher in Illinois both before and after his term in the military.

A number of the petitioners were drafted or compelled to enlist while still in college (many of whom were attending Illinois colleges) where they were studying to become teachers. The only difference between those individuals

and the members who are now permitted to purchase credits is that the latter were fortunate enough to complete their educations and begin teaching before the country required their services. By denying petitioners the right to purchase military service retirement credits the Board has unreasonably penalized them solely for being in a particular place at a particular time. A member who had the good fortune of completing his education one semester earlier, and who taught for six months before being drafted, is permitted the opportunity to purchase military service retirement credits whereas a member who had not completed his education in time to obtain a teaching position before being drafted is not permitted to do so. The result is to give one member more years of creditable service than another, thus providing the former with a larger retirement benefit at the mandatory retirement age than the benefit received by members in petitioners' position. Such a result clearly produces an arbitrary and unreasonable classification and an equal protection violation.

In connection with the second constitutional argument, the equal protection violation in the case at bar concerns facts of a nature such that, under the applicable law, the burden is on the state to refute the unconstitutional presumption. This concept applies when fundamental rights are involved in making the classification. In such a factual situation more stringent standards are applied than those considered under the rational relationship test. In such instances there is a greater likelihood that the differentiation under examination will be found to violate equal protection. This "compelling state interest test" and the rule that has evolved, as well as the distinction from the rational relation test, were identified in Illinois by the State Supreme Court in *In re Estate of Karas,* 61 Ill.2d 40, 329 N.E.2d 234 (1975), as follows:

> ". . . A legislative classification will be upheld if it bears a rational relationship to a valid governmental purpose, and the burden of rebutting the presumptive validity of the classification rests upon the party challenging its constitutionality (*People* v. *Sherman* (1974), 57 Ill.2d 1, 4, 309 N.E.2d 562). When the classification, however, affects fundamental rights (see *Hoskins* v. *Walker* (1974), 57 Ill.2d 127, 131, 311 N.E. 2d 98), the burden is placed upon the State to demonstrate that the distinction is justified by a compelling governmental interest." (329 N.E.2d at page 238)

The compelling state interest test applies to this case because the classification for military service credit involves the fundamental right of interstate travel. The statute in question imposes an unusual requirement by granting credits only to those who were teachers in Illinois both before and after their terms of military service. This requirement has a chilling effect on the right of an individual to travel between the various states because it denies that individual the right to purchase military service retirement credits while extending such a right to Illinois teachers.

Applying equal protection requisites to the instant matter, petitioners contend that they are entitled to purchase the credits regardless of which of the two tests is used, and the Court is thus compelled by the Federal Constitution to overturn the Illinois Appellate and Supreme Court decisions and grant petitioners the right to purchase the credits. First, for the purposes of military service pension credit, by classifying teachers who were not employed as such in Illinois before entering military service separately from those who were teachers in Illinois before entering the military, the Legislature has formulated a statutory classification which bears no reasonable relation to the stated purposes in providing such veterans' pension benefits, *i.e.*, to obtain and retain qualified personnel by providing an incentive to encourage teachers to come to Illi-

nois for a teaching position or to encourage them either not to leave Illinois or to enter the more remunerative private sector, and to reward service to the nation. Second, the same reasoning applies but is modified by insertion of the compelling state interest test, thus placing the burden on the respondents to show a compelling governmental interest to rebut the presumption of unconstitutionality due to the violation of a fundamental right. It seems clear that this compelling state interest test should apply in this matter since the restriction imposed by the statute impinges on the fundamental right to interstate travel; however, the statute cannot even survive scrutiny under the rational relationship test. The State's classification excluding veterans who were not members of the Teachers' Retirement System before their military service bears no rational relationship to the legislation's dual purposes. It is undisputed that the benefits produced by the pension plan are designed to provide funds sufficient to support a teacher and his or her family with basic necessities of life and to meet exigencies of old age. No rational relationship can be demonstrated for denying these benefits to some but not all of those teacher-veterans who are similarly situated except for an accident of time. Accordingly, since the State can neither rebut the presumption nor refute the violation of a rational connection between the statute and the purpose to be served, certiorari must be granted and the decision below must be reversed.

The extreme importance of the question is clear. The six named individual petitioners are members of a class of approximately nine thousand similarly situated teachers and administrators throughout the State of Illinois who have, in effect, been precluded from purchasing military service retirement credits in the pension system. A substantial majority of this group is composed of World War II veterans who have reached or are rapidly approaching

retirement. The petitioners are not requesting the State of Illinois to give them and other similarly situated individuals additional retirement benefits on which to live, but to simply grant them the right to purchase the credits. Receipt of the credits which they are entitled to purchase would provide them with adequate monthly retirement benefits to pay for the necessities of life and to meet the exigencies of old age.

It becomes more apparent that this issue is one which must be resolved by this Court when considered in a broader spectrum. The research efforts of counsel for the petitioners as well, apparently, of the Illinois Attorney General have disclosed no other appellate level decision throughout the nation precisely on issue.

The case most closely related to this matter is *Langston* v. *Levitt,* 425 F.Supp. 642 (S.D., N.Y., 1977), in which the District Court considered a statute quite analogous to that in issue in this case. That court upheld a requirement of residency in the state both before and after discharge from the military. The statute in issue in this case provides a more limited restriction not rationally related to the purpose of the statute, as mandated by the equal protection clause, by requiring membership in the pension system both before and after service in the military. The *Langston* court held that a residency requirement was rationally related to the ". . . state's interest in expressing gratitude and rewarding its own citizens for their honorable military service." (425 F.Supp. at pages 646-7) If the Illinois statute had such a residency requirement, our argument before this Court would be fruitless; however, such is not the case because the statute in question develops another prerequisite to obtaining military service retirement credits, *i.e.,* employment as a teacher in Illinois before military service. In the very least this has an unconstitutionally discriminatory effect on Illinois residents.

This narrower restriction bears no rational relationship to the purpose of the statute and, accordingly, is violative of equal protection.

CONCLUSION

It is quite clear from the arguments outlined above that a constitutional issue of great importance is presented by this petition. The constitutionality of the statute in question as it relates to the equal protection clause of the Federal Constitution has not previously been presented to this Court. Moreover, this issue is of substantial importance to a large group of Illinois residents who have relinquished an opportunity to obtain more remunerative private employment in exchange for a lifelong public service endeavor of educating the children of the State. This constitutional issue arises in the context of individuals engaged in a profession traditionally underpaid and is premised on their need to provide for the necessities of life in exchange for serving their nation and the State in a time of profound need. These individuals should not be denied the right to have their constitutional claims decided by the Highest Court of this nation.

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

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APPENDIX

APPENDIX A

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

Administrative Review

CHRIST, et al. vs. TRS; FISHMAN vs. TRS

ADMINISTRATIVE ORDER

This cause coming on for hearing on the Administrative Review petitions of Christ Christ, Kern Doerner, Kenneth Lumb, Oliver McCracken, Willis Rardin, and Stanley Fishman by and through their attorney John T. Roselli, the Board of Trustees, having heard the presentation of the Administration and the arguments and evidence of the Petitioners, hereby orders:

That the decision of the Administration be upheld and the petitioners' request for military service credit in the Teachers' Retirement System be hereby denied.

BOARD OF TRUSTEES OF THE TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

By /s/ *Roy A. Baker*
Roy A. Baker, Secretary/Director

February 22, 1979

APPENDIX B

IN THE CIRCUIT COURT
FOR THE SEVENTH JUDICIAL CIRCUIT
OF ILLINOIS

SANGAMON COUNTY, SPRINGFIELD, ILLINOIS

STANLEY FISHMAN,

Plaintiff,

vs. No. 212-79

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS, etc., et al.,

Defendants.

CHRIST A. CHRIST, et al.,

Plaintiffs,

vs. No. 213-79

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS, etc., et al.,

Defendants.

JUDGMENT

These causes have come on for hearing on plaintiffs' petition for administrative review. The court has considered the petition for administrative review, the answer of the defendant, consisting of a certified copy of the full record of the proceedings before the administrative

agency, and the briefs of the parties. The court, being fully advised in the premises, finds that the findings and decision of the Teachers' Retirement System of the State of Illinois are not against the manifest weight of the evidence.

THE COURT FURTHER FINDS that the decision of the Teachers' Retirement System of the State of Illinois is not contrary to law.

IT IS THEREFORE ADJUDGED that the decision of the Teachers' Retirement System of the State of Illinois is affirmed.

Entered this 21st day of January, 1980.

Enter:

/s/ *Simon Friedman*

Circuit Judge

Approved as to form

IN THE CIRCUIT COURT
FOR THE SEVENTH JUDICIAL CIRCUIT
OF ILLINOIS

SANGAMON COUNTY, SPRINGFIELD, ILLINOIS

STANLEY FISHMAN,
Plaintiff,
vs.
AT LAW
No. 212-79

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS, etc., et al.,
Defendants.

CHRIST A. CHRIST, et al.,
Plaintiffs
vs.
AT LAW
No. 213-79

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS, etc., et al.,
Defendants.

MEMORANDUM OF OPINION

The factual background existing in the case allege that the plaintiffs are all currently members or retired members of the Teachers' Retirement System of The State of Illinois; none of the plaintiffs were members of the System both immediately prior and subsequent to the periods during which they were in the military service. However, they did go into the teaching profession and they now request from the Teachers' Retirement Board the right to

purchase retirement credits for a period spent in the military in either the same fashion as those individuals who were members of the system both prior and subsequent to the years in military service, or in the same manner as are those individuals who were permitted to purchase credits for teaching service rendered elsewhere.

A hearing was held before the Teachers' Retirement Board and the Board denied that request, and from that the plaintiffs here prosecute their administrative review.

It was contended that the Board's decision is unconstitutional and it was also illegal due to the wording of the statute.

The Court, having read the briefs of the parties hereto, and having examined the record made on administrative review, affirms the Teachers' Retirement Board's decision, and the Complaint for Administrative Review is denied.

The Attorney General is hereby directed to prepare an order to conform with the decision of this Court, forward a copy to plaintiffs' attorney for approval as to form only and then submit same to the Court for entry.

Respectfully submitted,

/s/ *Simon L. Friedman*

Simon L. Friedman
Circuit Judge

ENTER: 1/3/80

APPENDIX C

STATE OF ILLINOIS
APPELLATE COURT
FOURTH DISTRICT

General No. 16101

STANLEY FISHMAN,

Plaintiff-Appellant,

(212-79) v.

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS, BOARD OF TRUSTEES OF THE TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS, JOSEPH M. CRONIN, ALEX NAIDENOVICH, VIVIAN L. NAJIM, JOSEPH M. PASTERIS, JUDITH FITCH, JOHN BARR, DON S. BROWNING and BOB DANIELS, individually and as members or officers of the Board of Trustees of the Teachers' Retirement System of the State of Illinois, and ROY A. BAKER, Individually and as Director of the Teachers' Retirement System of the State of Illinois, and WILLIAM J. SCOTT, as Attorney General of the State of Illinois,

Defendants-Appellees,

CHRIST A. CHRIST, OLIVER McCRAKEN, WILLIS RARDIN, KERN DOERNER, and KENNETH LUMB, individually and on behalf of others similarly situated,

Plaintiffs-Appellants,

(213-79) v.

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS, BOARD OF TRUSTEES OF THE TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS, JOSEPH M. CRONIN, ALEX NAIDENOVICH, VIVIAN L. NAJIM, JOSEPH M. PASTERIS, JUDITH FITCH, JOHN BARR, DON S. BROWNING and BOB DANIELS, individually and as

members or officers of the Board of Trustees of the Teachers' Retirement System of the State of Illinois, and ROY A. BAKER, Individually and as Director of the Teachers' Retirement System of the State of Illinois, and WILLIAM J. SCOTT, as Attorney General of the State of Illinois,

Defendants-Appellees.

Appeal from Circuit Court Sangamon County

212-79 and 213-79

Honorable *Simon L. Friedman,* Judge Presiding.

Mr. JUSTICE GREEN delivered the opinion of the court:

We are concerned here with the rights of members of the Teachers' Retirement System (Ill. Rev. Stat. 1977, ch. 108½, par. 16-107) who have served in the armed forces of this country, but were not members of the System at the time of entry into the armed forces, for pension credits for such service pursuant to the terms of section 16-127(5) of the Illinois Pension Code (Ill. Rev. Stat. 1977, ch. 108½, par. 16-127(5). The section purports to grant such credit only "*if a member returns to teaching service* within one calendar year after discharge * * *" (emphasis added).

On February 22, 1979, plaintiffs C. A. Christ, Oliver McCracken, Willis Rardin, Kern L. Doerner, and Kenneth W. Lumb filed a petition with the Board of Trustees of the Teachers' Retirement System seeking to purchase retirement credits under the System for their military service pursuant to section 16-128 of the Code (Ill. Rev. Stat. 1977, ch. 108½, par. 16-128). On the same date, plaintiff, Stanley Fishman, filed a similar petition. The Board of

Trustees denied both petitions and on March 27, 1979, the petitioners filed complaints in the circuit court of Sangamon County pursuant to section 16-200 of the Code (Ill. Rev. Stat. 1977, ch. 108½, par. 16-200) seeking review under the Administrative Review Act (Ill. Rev. Stat. 1977, ch. 110, par. 264, *et seq.*). The two cases were consolidated in that court and on January 3, 1980, it affirmed the decision of the Board of Trustees. We, in turn, affirm the decision of the circuit court.

The case concerns no disputed questions of fact. Section 16-107 describes as members of the System those personnel of the public schools and junior colleges and state and regional offices who qualify as "teachers" under section 16-106 of the Code (Ill. Rev. Stat. 1977, ch. 108½, par. 16-106) with exceptions not important here. At all pertinent times, section 16-127(5) of the Code described the following as periods for which pension credit can be obtained for service in the armed forces:

> "Any periods during times of hostilities or a declared national emergency spent in service with the military or naval forces of the United States or in educational programs that prepare for return to teaching sponsored by the federal government for persons discharged from military or naval services and, *if a member returns to teaching service within one calendar year after discharge* or after the completion of the educational program, the further period of not to exceed one calendar year thereafter between time spent in military or naval service or in such educational programs and the return to employment as a teacher, for which the member makes the required payments, as of the date such payments are completed" (emphasis added). Ill. Rev. Stat. 1977, ch. 108½, par. 16-127(5).

All plaintiffs have served in the armed forces and, at time of filing their petition, were members of the System. None were members when they entered the armed forces. Plaintiffs Christ, Rardin, and Lumb had not completed their education at the time they entered the military. Plaintiff Fishman had completed his education but had not begun to teach. Plaintiff McCracken taught for two years in Missouri before going back to school for additional credits. He enlisted in the army while in school and became a member of the Retirement System seven years after his discharge. As to plaintiff Doerner, the record only indicates that he became a member of the Retirement System eight years after his discharge.

The ruling of the Board of Trustees and the circuit court's affirmance of that decision was based on the fact that none of the plaintiffs had been members of the System when they entered the armed forces. Plaintiffs contended that those decisions were erroneous because (1) plaintiff McCracken was entitled to credit under the express terms of section 116-127(5) because he was teaching in another state when he entered service, and (2) denial of credits to any plaintiff is a denial to him of equal protection of the law regardless of whether the strict scrutiny or reasonable basis standards are applied to the classification made by section 16-127(5).

Plaintiffs argue that the clause "if a member returns to teaching service" refers to a return to the teaching profession after service by one who later becomes a member. Plaintiff McCracken, by virtue of his teaching in Missouri prior to service and returning to teaching in Missouri within the stated period after his discharge, would qualify for credit under this interpretation. In support of their position, plaintiffs cite a 1948 Attorney General's opinion that a teacher was entitled to such

credits when he was teaching outside the System at the time he began service. 1948 Ill. Atty. Gen. Op. 622.

However, in *People ex rel. Serbin* v. *Calderwood* (1948), 333 Ill. App. 541, 77 N.E.2d 849, the court rejected a similar argument in regard to a World War II veteran's claim in regard to a police pension under legislation stating that "Any member * * * may compute as a part of his * * * service, time spent in the service * * *" during various wars. (Ill. Rev. Stat. 1945, ch. 24, par. 894.) It is notable that even though the legislation had no reference to the member *returning* to police work, membership in the System at the time of entry into the armed forces was held to be a condition precedent to pension credit for his time in service. Following *Calderwood,* the Attorney General published a second opinion which concluded that a person who was not a member of the System prior to service in the armed forces was not entitled to such pension credit. 1960 Ill. Atty. Gen. Op. 37.

We agree with the second Attorney General's opinion. The statutory language here is even less favorable to pension credit than that in *Calderwood* because of the use of the phrase "member returns to teaching" which was absent there and implies that the teacher must be a "member" at the time of returning to teaching and not a teacher who returns to teaching and, at that time, becomes a member. Although the question is a close one, we conclude that the Board of Trustees and the circuit court properly held that plaintiff McCracken was not entitled to pension credit.

We now turn to the plaintiffs' contention that they have been denied equal protection of the law. As we have interpreted section 16-127(5), it operates upon a group of members of the System who have served in the armed forces and makes two classifications. One classification consists of those of the group who were "members" of the

System at the time of their entry into the service and who returned "to teaching service" within a specified short period thereafter. This class may obtain retirement credit. The other class are those of the group not meeting the requirement of the first class. All plaintiffs are in this class and the class is denied pension credit.

We reject summarily plaintiffs' contention that the classification is an invidious one requiring strict scrutiny under state or federal constitutions because it concerns their right to travel and also their claim that it requires strict scrutiny under the state constitution because it is based on gender. Unlike *Memorial Hospital* v. *Maricopa County* (1974), 415 U.S. 250, 94 S. Ct. 1076, 39 L. Ed. 2d 306 (indigent's right to free hospital and medical care) and *Shapiro* v. *Thompson* (1969), 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (indigent's right to general welfare assistance), cases enunciating the high priority right to travel, the rights to the pension credit are not conditioned upon the length of any prior residency. Rather, the pension rights are conditioned upon prior employment by the state granting the rights and prior membership in the System. Even if consideration be given to the likely relationship between prior membership in the System and prior residence within the state, we note that a federal district court has held that a state may condition benefits under a veteran's preference statute to residence within the state at the time of entry into the service and may properly exclude veterans who later become residents without infringing upon their constitutional right to travel. (*Langston* v. *Levitt* (S. D. N. Y. 1977), 425 F. Supp. 642.) Similarly, there is no gender qualification for receipt of the pension credit. The classification is between classes of veterans. All plaintiffs are males. By no stretch of the imagination does the classification discriminate against them because of their masculinity.

Neither the due process clause of the fourteenth amendment nor a similar provision of article I, section 2 of the Illinois Constitution of 1970 prohibits the legislature from enacting legislation which affects one class of people differently from others. However, even when the classification does not require strict scrutiny, as previously explained, it must be founded upon some substantial difference in circumstance or conditions related to the classification and not be arbitrary. (*Hamilton Corp.* v. *Alexander* (1972), 53 Ill. 2d 175, 290 N.E.2d 589.) By the legislation in question, the legislature has granted to veterans who taught in Illinois prior to their service a benefit in returning to teaching in Illinois not available to teachers who began their teaching here after their military service. One of the recognized purposes of a veteran's preference law is to "ease the transition from military to civilian life" (*Personnel Administrator of Massachusetts* v. *Feeney* (1979), 442 U.S. 256, 265, 99 S. Ct. 2282, ..., 60 L. Ed. 2d 870, 879). A state may reasonably deem itself to owe a greater responsibility to ease the transition to civilian life of those who were in its employee as teachers just prior to answering the call to military service than to veterans who were not among its teachers when answering that call. Another reasonable basis of the classification may be to encourage young teachers likely to be called into the armed forces to take employment in the public schools of the state secure in the knowledge that, if called into the service, the time spent there will not be lost for pension purposes. Although there are many reasons why granting pension credits to all veterans would be logical, the two classes involved are not similarly situated and the classifications created were not arbitrary or unreasonable.

Although the classification may seem less reasonable in regard to some plaintiffs than to others, language of the

United States Supreme Court in *New York City Transit Authority* v. *Beazer* (1979), 440 U.S. 568, 99 S. Ct. 1355, 59 L. Ed. 2d 587, is pertinent. There the court upheld a Transit Authority rule not to employ persons who used narcotic drugs or methadone. In rejecting the claim that the rule discriminated against persons who were successfully completing a methadone program, the court stated:

> "Because it does not circumscribe a class of persons characterized by some unpopular trait of affiliation, it does not create or reflect any special likelihood of bias on the part of the ruling majority. Under these circumstances, it is of no constitutional significance that the degree of rationality is not as great with respect to certain ill-defined subparts of the classification as it is with respect to the classification as a whole." 440 U.S. 568, 592, 99 S. Ct. 1355, 1369-70, 59 L. Ed. 2d 587, 607. For the reasons stated, we affirm.
> Affirmed.

TRAPP and WEBBER, JJ., concur.

APPENDIX D

53946 APPENDIX

ILLINOIS SUPREME COURT

CLELL L. WOODS, CLERK

Supreme Court Building

Springfield, Ill. 62706

(217) 782-2035

December 2, 1980

Mr. Robert F. Fuchs
Attorney at Law
One N. LaSalle St., S#1515
Chicago, IL 60602

No. 53946—Stanley Fishman, et al., etc., petitioners, vs. Teachers' Retirement System of the State of Illinois, et al., etc., respondents. Leave to appeal, Appellate Court, Fourth District.

The Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,

/s/ *Clell L. Woods*

Clerk of the Supreme Court

APPENDIX E

CONSTITUTIONAL AND STATUTORY PROVISIONS
U.S. Const. Amend XIV, §1

ARTICLE [XIV]

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Ill. Rev. Stats., Ch. 108½, §§16-106, 16-127 and 16-128 (1977), as amended 16-106.

§16-106. Teacher. "Teacher": (a) Any teacher, teacher-secretary, substitute teacher, supervisor, principal, supervising principal, superintendent or assistant superintendent, business manager, school nurse, or librarian who teaches or is employed in the public common schools included within this system on a full-time or if not full-time on a permanent and continuous basis in a position in which services are expected to be rendered for at least one school term, and who is certified under the law governing the certification of teachers;

(b) Any teacher, teacher-clerk, principal, supervisor, supervising principal, superintendent or assistant superintendent, and any certified librarian or assistant librarian employed in the Illinois School for the Visually Impaired, the Illinois School for the Deaf, the Illinois State Training School for Boys, the Illinois State Training School for

Girls, the Lincoln State School, the Dixon State School, the Illinois Soldiers' and Sailors' Children's School, the Illinois Visually Handicapped Institute, the Illinois Children's Hospital-School, or in any other facility of the Department of Mental Health and Developmental Disabilities or the Department of Children and Family Services, the Illinois Industrial School for Boys, or in any other facility of the Department of Corrections, the State Reformatory for Women, or the Illinois State Penitentiary, or in any facility of the Department of Corrections—Adult Division and the Department of Corrections—Juvenile Division on a full-time basis, or if not full-time on a permanent and continuous basis in a position in which services are expected to be rendered for at least one school term, and who is either certificted under the law governing the certification of teachers or a contributor to or participant in the "State Institution Teachers' Pension and Retirement Fund" at some time during the year immediately preceding September 1, 1941;

(c) Any regional superintendent of schools, assistant regional superintendent of schools, State Superintendent of Education; any person employed by the State Board of Education as an executive; any executive of the boards engaged in the service of public common school education in school districts within this system of which the State Superintendent of Education is an ex-officio officer;

(d) Any school service personnel employed in public school programs and certified for the position under the law governing the certification of teachers;

(e) Any employee of a school board association operating in compliance with Article 23 of The School Code[1] who

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[1] Chapter 122, §23-1 et seq.

is certified under the law governing the certification of teachers;

(f) Any school nurse described in paragraph (d) of Section 7—137 of Article 7 of this Code, electing in accordance with that section to become a member of this system;

(g) Any teacher, dean or president, of a Class II junior college and any professional associates and advisors employed in the office of such dean or president, any testing officer, counselor, librarian, or person performing the duties of a testing officer, counselor or librarian in Class II junior colleges who is certified under the law governing the certification of teachers;

(h) Any person employed by the Retirement System as an executive who is certified under the law governing the certification of teachers; and

(i) Any director, supervisor, instructor, counselor, project writer or other professional personnel employed on a full-time basis or if not full-time on a permanent and continuous basis in a position in which services are expected to be rendered for at least one school term, by and under the supervision and control of a regional superintendent of schools, provided such employment requires the employee to be certified under the law governing the certification of teachers and is in an educational program serving 2 or more districts in accordance with a joint agreement authorized by the Illinois School Code or an educational program conducted by the regional superintendent of schools in conformity with Federal legislation authorizing such programs.

The foregoing definition is subject to the proviso that any teacher who has taught in the public common schools in school districts or State institutions included within this system on a full-time basis up to an age determined by a

general ruling of a local board of education or State institution, and who continues to be or is thereafter employed in such schools or institution on yearly contracts under a reduced working load and a reduced monthly salary, unless the teacher elects in a written notice filed with the board not to continue participation, shall continue to be classified as a teacher and shall not be disqualified from full participation in the provisions of this Article.

Employment on a full-time basis means employment which normally requires at least four clock hours daily in public schools and other employees covered by Articles 15 and 16 of the "Illinois Pension Code";[2] however, teachers employed temporarily as substitutes on a daily basis may be allowed credit for part of a year under this Article.

A beneficiary of an age retirement allowance who is given temporary employment by a school board not exceeding that permitted by Section 16—118 is not a "teacher" within this Article.

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[2] Chapter 108½, §§15-101 et seq., 161-101 et seq.

P.A. 80-263 substituted "School for the Visually Impaired" for "Braille and Sight Saving School" in sub-sec. (b).

P.A. 80-454 substituted "term" for "year" wherever appearing; in subsec. (c), substituted "State Superintendent of Education" for "Superintendent of Public Instruction" and "by the State Board of Education" "in the office of the Superintendent of Public Instruction"; and rewrote subsec. (d) which had related to psychological examiner.

Final legislative action, 80th General Assembly:

P.A. 80-263-Aug. 21, 1977

P.A. 80-454-Sept. 3, 1977

See Ill.Rev.Stat. ch. 131, §4.2 as to the effect of (1) more than one amendment of a section at the same session of the General Assembly or (2) two or more acts relating to the same subject matter enacted by the same General Assembly.

Amended by P.A. 80-263, §2, eff. Aug. 21, 1977; P.A. 80-454, §1, eff. Sept. 3, 1977.

16—127. §16-127. Creditable service—Computation of credits.

The following periods of service, subject to the limitation in paragraph (2) of Section 16-123, shall be considered creditable service, and each member shall receive credit for all such service for which satisfactory evidence is supplied to the board, as of the dates specified:

(1) Service as a teacher, on and after the date membership begins, during continuous membership thereafter, as of the date the service is rendered. Teachers employed temporarily as substitutes for a total of 20 or more days in a school term may elect to contribute toward a fractional year of credit as provided herein. Teachers employed prior to July 1, 1969 permanently and continuously for an average of at least 10 clock hours weekly in a position in which services were expected to be rendered for at least one school term may elect to contribute and establish such credit.

(2) Service as a teacher prior to the date membership begins, for which the member makes the required payments, as of the date the payments are completed.

(3) Service before the date as of which a statement is required to be filed for which credit is claimed therein, in a capacity essentially similar or equivalent to that of a teacher, in the public common schools in school districts in this State not included within the provisions of this system, or of any other State, territory, dependency or possession of the United States, including the Phillipine Islands, or in schools operated by or under the auspices of the United States, or under the auspices of any agency or department of any other State, during any period of

professional speech correction or special education experience for a public agency on a full or part-time basis within this State or any other State, territory, dependency or possession of the United States, including the Philippine Islands, for a period not to exceed 2/5 of the total creditable service of the member or 10 years, for which the member makes the required contributions, as of the date the contributions are completed. The maximum service of 10 years which is allowable under this paragraph shall be reduced by the service credit which is validated by other retirement systems under paragraph (i) of Section 15—113 and paragraph 1 of Section 17—133 of this Code. Credit granted under this paragraph may not be used in determination of a retirement allowance or disability benefits unless the member contributes for at least 5 years subsequent to his employment to one or more of the following systems: Teachers' Retirement System of the State of Illinois, State Universities Retirement System and the Public School Teachers' Pension and Retirement Fund of Chicago. Whenever such service credit exceeds the maximum allowed for all purposes of this Article, the first service rendered in point of time shall be considered. Creditable service shall be granted for that service for which payment is completed.

(4) Service prior to the date a statement is required to be filed for which credit is claimed therein, in any state school or institution, as a teacher, as defined in Section 22 of "An Act to create and administer a State institutions teachers' pension and retirement fund", filed June 14, 1917, as amended[1], for which the member makes the required payments, as of the date the payments are completed.

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[1] Chapter 122, §25-22 (repealed).

(5) Any periods during times of hostilities or a declared national emergency spent in service with the military or naval forces of the United States or in educational programs that prepare for return to teaching sponsored by the federal government for persons discharged from military or naval service and, if a member returns to teaching service within one calendar year after discharge or after the completion of the educational program, the further period of not to exceed one calendar year thereafter between time spent in military or naval service or in such educational programs and the return to employment as a teacher, for which the member makes the required payments, as of the date such payments are completed.

(6) If a member enters military or naval service immediately upon termination of employment as a teacher, the credit authorized by paragraph (5) shall be determined as follows: if entry occurs during the first 6 months of a calendar year, credit shall be allowed from the date of entry; if entry occurs during the months of July or August, and the teacher was in teaching service at the end of the immediately preceding school term, credit shall be allowed from July 1 of the year in which he entered service; if entry occurs during the last 4 months of a calendar year, and the teacher was in teaching service at the beginning of the school term, credit shall be allowed from July 1 of such year. If a teacher enters the teaching service after the beginning of the school term, credit for military service entered into during the last 4 months of the calendar year, shall be granted from the date of entry into military service.

In all other cases where credit for military service is allowed, credit shall be allowed from the date of entry into the service.

(7) Any periods terminating before January 1, 1944 spent in full-time service of the State, if such service

would have been creditable under the State Employees' Retirement System of Illinois had the act creating such system been in effect, and for which the member makes the required payments as of the date the payments are completed.

(8) Any periods served as a member of the General Assembly for which the member makes the required payments, as of the date the payments are completed.

(9) Any periods terminating before September 1, 1941 spent in full-time service of institutions covered by the State Universities Retirement System, if such service would have been creditable under that System, had it been in effect, for which the member makes the required payments, as of the date the payments are completed.

(10) The period of service credited to school nurses under the Illinois Municipal Retirements Fund Act, filed July 29, 1939, as amended or under Article 7 of this Code[2] from August 8, 1961 to the effective date of the election of any such nurse to reestablish membership in this system, as provided in Section 5(d) of the Illinois Municipal Retirement Fund Act or in Section 7—137(d) of Article 7 of this Code,[3] and the period of service credited before August 8, 1961 to such school nurses as members of this system if such credits have not been forfeited, or if forfeited, have been reinstated as provided in this Section. Credit for such service under the Illinois Muincipal Retirement Fund Act or under Article 7 of this Code shall be conditioned upon the member making additional contributions to this system equal to the difference between the contributions made by him to the Illinois Municipal Retirement Fund, excluding contributions applicable to social security

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[2] Chapter 108½, §7-101 et seq.

[3] Chapter 108½, §7-137.

coverage, and the contributions he would have made during such period had he been a member of this system.

(11) Any periods after July 1, 1963, for which a teacher, as defined in Section 16—106, is granted a leave of absence provided the member returns to teaching following the leave; however, total credit under this paragraph may not exceed 3 years. Credit is conditioned upon the member making the required payments, as of the date the payments are completed.

(12) As a basis for calculating benefits payable as a result of the above service on less than a full-time basis, the employing unit shall report the total number of hours of annual employment to the system. The system will determine the percentage of time employed by establishing the ratio that the average number of hours of daily employment bears to 4 clock hours. The average number of hours of daily employment shall be calculated by dividing the number of hours of annual employment reported to the system by the employing unit, by 170 days. In calculating a retirement allowance payable hereunder, if a member has been an employee at one-half time or less for 3 or more years, service shall be considered for such employment in excess of 3 years, in the proportion that the time employed during such employment bears to the time employed during the period on which his average salary for the highest 4 consecutive years within the last 10 years of creditable service is based; however, this adjustment shall not be made in determining eligibility for benefits.

(13) A member completing creditable service under this system after July 1, 1972 and retiring after June 30, 1977, shall at retirement be entitled to service credit for unused accumulated sick leave granted by the last employer under this system. Such service credit shall be the ratio of the number of unused accumulated sick leave days to

170 days, subject to a maximum of one-half year of service credit. At the member's retirement, the employer shall certify to the Retirement System the number of unused accumulated sick leave days credited to a member at the time of termination of service. The period of unused sick leave shall not be considered in determining the effective date of retirement. No contribution is required for this service credit.

(14) Service as a teacher, as defined in Section 16—106 of this Article, completed prior to July 1, 1955 and immediately following disability retirement wherein credit was denied due to a beneficiary being restored to active service at a salary less than the final regular salary upon the basis of which he was retired, for which the member makes the required payments, as of the date such payments are completed.

The total credit granted under paragraphs 5 and 6 of this Section may not exceed 5 years for any member unless the service: (a) is validated before July 1, 1964, and (b) does not extend beyond July 1, 1963.

All service credits described in this Section shall be effective only if not used for credit in any other statutory tax-supported public employee retirement system with the exception of the Social Security Act, as amended,[4] and not

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[4] 42 U.S.C.A. §301 et seq.

P.A. 80-454 substituted "term" for "year" wherever appearing; deleted the second to last sentence of par. (3) relating to establishing evidence of service; in par. (2), deleted "after August 26, 1969" following "3 or more years"; in par. (13), inserted "under this system", substituted "retiring after June 30, 1977" for "within 120 calendar days prior to retirement" in the first sentence, added the words "at the member's retirement" to the third sentence and sub-

(footnote continued)

more that 5 years of military service credit granted a member under paragraphs 5 and 6 of this Section which may also be used by the member to qualify for a military retirement allotment from any branch of the armed forces of the United States. In any event such service credits shall terminate upon cessation of membership for any cause.

Credit may not be granted under this Section covering a period for which an age retirement or disability retirement allowance has been paid.

Amended by P.A. 80-454, §1, eff. Sept. 3, 1977; P.A. 80-644, §1, eff. Oct. 1, 1977; P.A. 80-906, §1, eff. Sept. 22, 1977.

16-128. §16-128. Creditable service—Required payments. The required payments specified in Section 16-127 shall be determined as follows:

(1) For service prior to July 1, 1939, subject to the minimum of $420 per year for service under Section 16-127(3) of this Article for those who were not members as of June 30, 1963, the contributions which were or would have been required during such periods under "An Act in relation to an Illinois State Teachers' Pension and Re-

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(footnote continued)

stituted "termination of service" for "retirement".

P.A. 80-644, in par. (1), substituted "an average of at least 10" for "at least 2" and "weekly" for "daily".

P.A. 80-906 deleted the same sentence in par. (3) as P.A. 80-454.

Final legislative action, 80th General Assembly:

P.A. 80-454Sept. 3, 1977

P.A. 80-644-Sept. 14, 1977

P.A. 80-906-Sept. 22, 1977

See Ill. Rev. Stat. ch. 131, §4.2 as to the effect of (1) more than one amendment of section at the same session of the General Assembly or (2) two or more acts relating to the same subject matter enacted by the same General Assembly.

tirement Fund", approved May 27, 1915, as amended,[1] and which were not previously paid either under such Act or under this retirement system, plus an amount equal to all refunds paid under such Act and under Section 16-151(2) of this Article, together with regular interest from the date the unpaid contributions were due or the refunds were paid to July 1, 1965, and 4% per annum compounded annually until July 1, 1977 and 5% per annum compounded annually thereafter to the date such payments are received, except interest for service under Section 16-127(3) of this Article wherein the $420 minimum is applicable shall accrue at the rate of $4 per annum compounded annually from July 1 preceding date of membership until July 1, 1977 and at the rate of 5% compounded annually thereafter to date of payment; provided, that for a member first making application on or after July 1, 1949, for prior service credit, the payment thereon shall be at a flat rate of $50 for a legal school year and at a proportional rate for an incomplete year, and the flate rate of $50 shall be considered due as of July 1, 1939, together with regular interest from that date until July 1, 1965, and with interest at the rate of 4% compounded annually after June 30, 1965 and until July 1, 1977, and at the rate of 5% compounded annually thereafter until paid.

Contributions for prior service under this paragraph shall be credited only to the Employer's Contribution Reserve.

(2) For service on and after July 1, 1939, subject to the minimum of $420 per year for service under Section 16-127(3) of this Article for those who were not members on June 30, 1963, the contributions which would have

---

[1] Chapter 122, §578 et seq. repealed

been required had such service been rendered as a member under this system, plus an amount equal to all refunds paid under Section 16-151(1) of this Article, together with regular interest from the date the contributions were due or such refunds were paid to July 1, 1965, and at the rate of 4% per annum compounded annually until July 1, 1977 and 5% compounded annually thereafter to the date of payment except for interest charges for service under Section 16-127(3) of this Article. For service under Section 16-127(3) of this Article, regular interest shall accrue to July 1, 1965, and 4% per annum compounded annually until July 1, 1977 and 5% compounded annually thereafter to date of payment; except wherein the $420 minimum is applicable interest at the rate of 4% compounded annually shall accrue from July 1, preceding date of membership until July 1, 1977 and 5% compounded annually thereafter to date of payment. For periods specified in paragraphs 5 and 6, of Section 16-127 salary shall be assumed for the remainder of the school year at the same rate as that received at the time of entering the military or naval service, and, for each school year thereafter as being increased 5% over the previous year; and for periods specified in Section 16-127 (11), salary shall be at the same rate as for full-time teaching immediately preceding such periods. Amended by P.A. 80-720, §1, eff. Sept. 16, 1977.

NO. .....

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, A.D. 1980

STANLEY FISHMAN, CHRIST A. CHRIST, OLIVER McCRACKEN, WILLIS RARDIN, KERN DOERNER AND KENNETH LUMB,
Petitioners,

vs.

TEACHERS' RETIREMENT FUND OF THE STATE OF ILLINOIS, et al.,
Respondents.

JACK VIHON AFFIDAVIT OF FILING

ROBERT F. FUCHS, being first duly sworn on oath, deposes and states that he filed with the Clerk of the Supreme Court of the United States a Petition for a Writ of Certiorari to the Illinois Supreme Court by placing forty (40) copies of said petition in an envelope addressed to MICHAEL RODAK, JR., CLERK, SUPREME COURT OF THE UNITED STATES, Washington, D.C. 20543, and depositing same, postage-prepaid, certified mail, return receipt requested, in the mail chute at 160 North LaSalle Street, Chicago, Illinois, before the hour of 5:00 P.M. on the 27 day of February, 1981.

.....
Robert F. Fuchs
JACK VIHON

Subscribed and sworn to before me this 27 day of February, 1981.

.....
Notary Public

NO. .....

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, A.D. 1980

STANLEY FISHMAN, CHRIST A. CHRIST, OLIVER McCRACKEN, WILLIS RARDIN, KERN DOERNER AND KENNETH LUMB,
Petitioners,

vs.

TEACHERS' RETIREMENT FUND OF THE STATE OF ILLINOIS, et al.,
Respondents.

CERTIFICATE OF SERVICE

TO: TYRONE FAHNER,
Attorney General of the State of Illinois
160 North LaSalle Street — Suite 800
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have filed this date with the Clerk of the Supreme Court of the United States by certified mail, return receipt requested, a Petition for a Writ of Certiorari to the Illinois Supreme Court, three (3) copies of which are enclosed.

DATED this 27 day of February, 1981.

.....

Robert F. Fuchs
Attorney for Petitioners
Suite 1515, One North LaSalle Street
Chicago, Illinois 60602
Telephone: 312/726-6656

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

JACK VIHON

ROBERT F. FUCHS, being first duly sworn on oath, deposes and states that he served the above and foregoing upon all parties required to be served by serving the person indicated by placing same in a duly addressed and postage-prepaid envelope and depositing same in the mail chute at 160 North LaSalle Street, Chicago, Illinois, before the hour of 5:00 P.M. on the 27 day of February, 1981.

Jack Vihon

Subscribed and sworn to
before me this 27 day
of February, 1981.

Carol W Jolis

Notary Public

Supreme Court, U.S.
FILED
MAY 15 1981
ALEXANDER L. STEVAS
CLERK

No. 80-1502

IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1980

STANLEY FISHMAN, CHRIST A. CHRIST, OLIVER McCRACKEN, WILLIS RARDIN, KERN DOERNER and KENNETH LUMB,

Petitioners,

vs.

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS, et al.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Petitioners,

VS.

TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS, et al.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

QUESTION PRESENTED FOR REVIEW

Whether the Illinois statutory scheme granting military service retirement credits complies with the requirements of the equal protection clause of the Fourteenth Amendment of the United States Constitution.

STATEMENT OF THE CASE

The Illinois Pension Code allows members of the Illinois Teachers' Retirement System the right to purchase retirement credits for periods spent in military service provided they were members of the System prior to the time they entered military

service and returned to teaching in Illinois within a designated period following discharge. The Illinois statutory scheme denies members of the System the right to purchase retirement credits for periods spent in the military service prior to the time they become members of the System. Ill. Rev. Stat., 1977, ch. 108½, § 16-127(5).

The petitioners filed a petition with the Board of Trustees of the Teachers' Retirement System seeking to purchase retirement credits under the System for their military service. All of the petitioners had served in the armed forces, and all were members of the System at the time of filing their petition with the Board. However, none of the petitioners were members of the System when they entered the armed forces. Petitioners C.A. Christ, Willis Rardin and Kenneth W. Lumb had not completed their education at the time they entered military service. Petitioner Stanley Fishman had completed his education but had not begun to teach. Petitioner Oliver McCracken had taught in Missouri for two years, returned to school for additional credits, enlisted in the army while in school, and became a member of the Retirement System seven years after his discharge. Petitioner Kern L. Doerner became a member of the Retirement System eight years after his discharge. (See *Fishman* v. *Teachers' Retirement System,* 86 Ill. App. 3d 649, 408 N. E. 2d 113, 115 (1980)).

The Board of Trustees denied the petition for the reason that none of the petitioners had been members of the System when they entered the armed forces. On administrative review, the Circuit Court of Sangamon County, Illinois, affirmed the Board's decision. On appeal, the Illinois Appellate Court, Fourth District, rejected petitioners' argument that under the express terms of the statute petitioner McCracken was entitled to purchase credits because he had taught in another state before he entered military service. The Appellate Court also held that the classifications created by the Illinois statute do not

violate petitioners' equal protection rights. The Appellate Court summarily rejected petitioners' contention that the classifications require strict scrutiny because they violate petitioners' right of interstate travel and are based on gender. The Appellate Court found that, under traditional equal protection principles, the two statutory classes involved are not similarly situated; further, the classifications created are not arbitrary and unreasonable. The Illinois Supreme Court subsequently denied the petitioners' petition for leave to appeal.

REASONS FOR DENYING THE WRIT

THE ILLINOIS STATUTORY SCHEME GRANTING MILITARY SERVICE RETIREMENT CREDITS COMPLIES WITH THE REQUIREMENTS OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

Petitioners contend that the statutory classification denying them the right to purchase retirement credits for periods spent in the military service prior to the time they became members of the Teachers' Retirement System constitutes an equal protection violation under the Federal Constitution. Since there is more than one test for evaluating laws challenged under the equal protection clause, depending upon the interest affected or the classification involved, the Court must first determine what standard of review is appropriate. *Dunn* v. *Blumstein,* 405 U. S. 330, 31 L. Ed. 2d 274, 280 (1972). If a statute burdens a suspect group or a fundamental personal right, the Court will apply a stricter standard of scrutiny; otherwise, the Court presumes the constitutionality of a statutory classification and requires only that the classification challenged be rationally related to a legitimate state interest. *Vance* v. *Bradley,* 440 U. S. 93, 59 L. Ed. 2d 171 (1979).

A.

The Illinois Statutory Scheme Does Not Violate A Fundamental Right.

The petitioners suggest that this Court should apply strict judicial scrutiny regarding their equal protection claim because the classifications for military service credit violate the fundamental right of interstate travel. It is respectfully submitted that this contention is wholly without substance.

In the Appellate Court below, petitioners' argument in this regard was grounded on the claim that the Illinois statute

imposes an overly restrictive residency requirement. It was shown, however, that there is no residency requirement whatsoever regarding retirement credits for military service. Sections 16-127(5) and (6) of the Illinois Pension Code merely require a "member" of the Retirement System to have entered military service upon terminating employment as a teacher, and to have returned to employment as a teacher within one year after discharge. Ill. Rev. Stat., 1977, ch. 108½, §§ 16-127(5) and 127(6). To qualify as a "member" of the System, a person must be a certified teacher or other designated employee in the public common schools in cities or school districts of less than 500,000 population. Ill. Rev. Stat., 1977, ch. 108½, §§ 16-102; 16-106. Certification as a teacher in Illinois does not require residency in Illinois. Rather, § 21-1 of the Illinois School Code requires only that a person be a United States citizen and, in certain limited situations, even this is not required. Ill. Rev. Stat., 1977, ch. 122, § 21-1. The absence of any residency requirement is emphasized by an amendment to the School Code which specifically states that residency within any school district cannot be considered regarding compensation, promotion, assignment or transfer of teachers. Ill. Rev. Stat., 1977, ch. 122, § 24-4.1.

Furthermore, as the Appellate Court below found, even if the Illinois statute could be considered to implicitly require Illinois residency at the time a teacher entered the military service, such a requirement would still not violate the fundamental right of interstate travel. Only "durational" residency requirements infringe or penalize the right to travel. *McCarthy* v. *Philadelphia Civil Service Commission,* 424 U. S. 645, 47 L. Ed. 2d 366 (1976); *Andre* v. *Board of Trustees,* 561 F. 2d 48 (7th Cir. 1977). In *Langston* v. *Levitt,* 425 F. Supp. 642 (S. D. N. Y. 1977), which petitioners describe as "[t]he case most closely related to this matter" (Pet. Br. p. 18), the federal district court held that a state may condition benefits under a veteran's preference statute to residence within the state

at the time of entry into the military service, and may properly exclude veterans who later become residents without infringing upon their constitutional right to travel.

Petitioners have abandoned in this Court any claim that the Illinois statutory scheme imposes an overly restrictive residency requirement. The sum of petitioners' argument now amounts to no more than the following:

> The statute in question imposes an unusual requirement by granting credits only to those who were teachers in Illinois both before and after their terms of military service. This requirement has a chilling effect on the right of an individual to travel between the various states because it denies that individual the right to purchase military service retirement credits while extending such a right to Illinois teachers.
>
> (Pet. Br. p. 16)

Clearly, this conclusory generalization is insufficient to show the violation of a fundamental right. The Illinois Supreme Court has refused to reach the merits of such a general claim, holding that "constitutional issues cannot be raised by such general allegations." *People* v. *Palkes,* 52 Ill. 2d 472, 288 N. E. 2d 469, 471 (1972). The Illinois Supreme Court has emphasized:

> Where the constitutional validity of a statute is assailed the objection must be specific and complete. It is not enough merely to assert in a vague and general fashion that constitutional safeguards are violated. The particular respect in which the statute violates some constitutional limitation must be pointed out and preserved for review in order to obtain a determination of such questions by this court.
>
> (*Biggs* v. *Cummins,* 5 Ill. 2d 512, 126 N. E. 2d 208, 210 (1955).

Since petitioners' claim that a fundamental right has been violated is unsupported by any substantial factual or legal basis, this Court should not consider it.

B.

The Classifications Created by the Illinois Veterans Credit Statute Bear a Rational Relationship to a Legitimate State Purpose.

Under traditional equal protection principles, a state retains broad discretion to classify. *Graham* v. *Richardson,* 403 U. S. 365, 29 L. Ed. 2d 534 (1971). To pass constitutional muster, the test is not whether a statute results in unequal treatment, but whether the legislative classification bears a rational relationship to a legitimate state purpose. *United States Department of Agriculture* v. *Moreno,* 413 U. S. 528, 37 L. Ed. 2d 782, 787 (1973). Where purely economic matters are involved, as here, they "traditionally merit only the mildest review under the Fourteenth Amendment." *Craig* v. *Boren,* 429 U. S. 190, 50 L. Ed. 2d 397, 413 (1976). The burden is on the one who assails a legislative classification to show that "it does not rest upon any reasonable basis, but is essentially arbitrary." *Morey* v. *Doud,* 354 U. S. 457, 1 L. Ed. 2d 1485, 1490 (1957).

It is clear that the classifications created by the instant Illinois statute are not arbitrary or unreasonable, but bear a reasonable relationship to a legitimate state purpose. It should be noted that the statutory scheme governing the Teachers' Retirement System evinces a strong public policy of not only attracting experienced teachers to the State of Illinois, but of encouraging experienced teachers to return to, and remain in, the teaching service in Illinois. First, § 16-127(3) of the Illinois Pension Code induces experienced teachers to seek employment in the public school in Illinois by affording them the opportunity to purchase retirement credits for their years of teaching service outside of Illinois, up to a maximum of ten years. Ill. Rev. Stat., 1977, ch. 108-1/2, § 16-127(3). Hence, out-of-state teachers who seek employment in Illinois are protected against a substantial loss of retirement benefits which they may have accumulated while outside of Illinois and which, in most instances, would be lost when the teacher pursues his career in

Illinois. The right to purchase retirement credits is likewise extended to teachers in Illinois who are not covered by the Teachers' Retirement System, such as teachers in the Chicago public schools, and who seek employment in schools covered by the System.

Section 16-127(5), which is involved in the instant case, evinces a separate but equally salutary public purpose which is accomplished by means of a rational classification. The statute permits teachers in Illinois whose professional careers are interrupted because of service in the military or a national emergency to purchase retirement credits for that period. The statute thus minimizes the loss in retirement benefits which the teacher and his family would suffer by virtue of the teacher's service in the armed forces in time of national need and urgency. As a result, the statute encourages experienced teachers who have already been part of the System to return to teaching in Illinois following their discharge from military service.

The legitimacy of the governmental interest in veterans preference legislation "is beyond serious judicial dispute." *Rios* v. *Dillman,* 499 F. 2d 329, 331 (5th Cir. 1974). A frequently stated objective of such laws is "to ease the transition from military to civilian life" (*Personnel Administrator of Massachusetts* v. *Feeney,* 442 U. S. 256, 60 L. Ed. 2d 870, 879 (1979); that is, to aid in the rehabilitation of the veteran whose normal life style has been disrupted by military service (*Rios* v. *Dillman,* 499 F. 2d at 332), and to compensate veterans for the economic disruption to their civilian careers caused by the military. *Langston* v. *Levitt,* 425 F. Supp. 642, 645 (S.D.N.Y. 1977). The Illinois statute accomplishes the dual purpose of compensating Illinois teachers for the time lost from teaching service within the System while in the armed forces, and thus rewards "in a special way the men and women who answered the call to defend their country in time of war." See *People* v. *Calderwood,* 333 Ill. App. 541, 77 N. E. 2d 849, 852 (1948).

The issue here is not whether the legislature could have acted differently, but that the legislature did not act arbitrarily and capriciously in enacting the military service credit provision. Providing benefits for those persons who taught in Illinois before and after military service bears a rational relationship to the state's overall legitimate interest in securing "better governmental service by stabilizing employment and giving security to those in public service." *People* v. *Calderwood,* 77 N. E. 2d at 852. The instant Illinois statute was never intended to benefit all veterans, as petitioners seem to assert. Numerous other housing, educational and employment laws have been passed to do this. The Illinois statute was simply intended to compensate veterans whose service in the System was interrupted by time spent in the military. As the Appellate Court below stated:

> A state may reasonably deem itself to owe a greater responsibility to ease the transition to civilian life of those who were in its employ as teachers just prior to answering the call to military service than to veterans who were not among its teachers when answering that call.
> (408 N. E. 2d at 116)

Statutes like the one involved here, requiring membership in a retirement system at a given time in order to receive certain benefits, are not unusual. Many governmental services have a similar requirement. (See e.g., *People* v. *Calderwood, supra,* discussing the Illinois Fireman's Pension Act and the Police Pension Fund; also Ill. Rev. Stat., 1977, ch. 108½, § 15-113(i), concerning the State Universities Retirement System). Also, this Court recently examined the validity of federal legislation which, *inter alia,* limited "windfall" retirement benefits to railroad employees who had a "current connection" with the railroad industry at a certain point in time. In upholding the legislation against an equal protection claim, the Court noted in *U. S. Railroad Retirement Bd.* v. *Fritz,* ____ U. S. ____, 66

L. Ed. 2d 368 (1980), that the "current connection" test has been frequently used by Congress as an eligibility requirement for retirement benefits. The Court held that such test is not a "patently arbitrary" means for determining which employees are "career" employees, and that Congress could assume those who had a current connection with the railroad industry when the Act was passed in 1974 were more likely than those who had left the industry prior to 1974, and had never returned, to be among the class of persons who pursue careers in the railroad industry, "the class for whom the Railroad Retirement Act was designed." 66 L. Ed. 2d at 378.

Here, too, the Illinois legislature could assume that those who had a current connection with the Illinois teaching system at the time they entered military service, and who returned to the System following discharge, were more likely than those who had not yet taught in the System, or who never returned to the System, to be among the class for whom the Illinois Pension Code is designed, that is, the class of persons who pursue careers in the System. The desire to compensate those teachers in some measure for the disruption in their previous employment occasioned by military service, to express gratitude for such service, and to encourage experienced teachers to return to, and remain in, teaching service in the State following discharge is a rational basis for giving persons who previously taught in Illinois the right to purchase retirement credits. Likewise, as the Appellate Court below stated:

> Another reasonable basis of the classification may be to encourage young teachers likely to be called into the armed forces to take employment in the public schools of the state secure in the knowledge that, if called into the service, the time spent there will not be lost for pension purposes.
> (408 N. E. 2d at 116-17)

Legislative classifications will be upheld "unless they bear no rational relationship to the state's objectives." *Massachusetts Bd. of Retirement* v. *Murgia,* 427 U. S. 307, 314, 49 L. Ed. 2d

520 (1976). Where, as here, there are "plausible reasons" for legislative action, this Court's "inquiry is at an end." *U.S. Railroad Retirement Bd.* v. *Fritz,* 66 L. Ed. 2d at 378. It is "constitutionally irrelevant" whether the reasoning set out above in fact underlay the Illinois legislative decision since this Court has "never insisted that a legislative body articulate its reasons for enacting a statute." *Id.* Similarly, it is of "no constitutional significance" that a classification may be under-inclusive, or that the degree of rationality is not as great regarding certain subparts of the classification as it is with respect to the classification as a whole. *New York City Transit Authority* v. *Beazer,* 440 U. S. 568, 59 L. Ed. 2d 587, 607 (1979). This Court has emphasized:

> The "task of classifying persons for . . . benefits . . . inevitably requires that some persons who have an almost equally strong claim to favorite treatment be placed on different sides of the line." [citation omitted], and the fact the line might have been drawn differently at some points is a matter for legislative, rather than judicial, consideration. (66 L. Ed. 2d at 378-79)

In summary, the equal protection clause requires only a rational justification for the decision to classify, so long as classifications do not involve suspect criteria. The petitioners have failed to show that the Illinois classification does not bear a rational relationship to a legitimate state purpose and have, therefore, failed to sustain their burden of showing that the statute violates equal protection.

C.

The Illinois Veterans Credit Statute Operates Equally On All Persons Who Are Similarly Situated.

Petitioners essentially argue that if any members of the Teachers' Retirement System can purchase retirement credits for periods spent in the military, all must be allowed to do so. However, the Constitution does not require things which are

different in fact to be treated in law as though they were the same. *Norvell* v. *State of Illinois,* 373 U. S. 420, 10 L. Ed. 2d 456, 459 (1963). A statute is not unconstitutional because it affects one class of persons differently from others. *Reed* v. *Reed,* 404 U. S. 71, 30 L. Ed. 2d 225, 229 (1971); *Hamilton Corp.* v. *Alexander,* 53 Ill. 2d 175, 290 N. E. 2d 589, 591 (1972). Rather, the test of equal protection is whether legislation operates equally on all persons in the class to which it applies. *People* v. *Warren,* 11 Ill. 2d 420, 143 N. E. 2d 28, 34 (1957). Hence, a classification must be upheld so long as it is not arbitrary and is founded upon some substantial difference in circumstances or conditions properly related to the classification. *Johnson* v. *Robison,* 415 U. S. 361, 39 L. Ed. 2d 389 (1974); *Hamilton Corp.* v. *Alexander,* 290 N. E. 2d at 591.

There are substantial differences in circumstances and conditions between the classifications created by the instant statute, so that the classes involved are simply not similarly situated and need not be treated the same. Petitioners attempt to equate themselves with teachers whose professional careers were interrupted by the exigencies of hostilities or a national emergency. None of the petitioners were teaching immediately prior to entering military service. Thus, petitioners have not undergone the hardship which befalls a teacher whose career has been interrupted by military service. Also, petitioners' service in the military occurred prior to their entrance into the System and, therefore, any possible loss in retirement benefits is, at best, conjectural and speculative.

Petitioners rely on a hypothetical situation to establish an equal protection violation which rests on a highly questionable premise. (Pet. Br. pp. 10-11) Contrary to petitioners' assumption, persons who are allowed to purchase military service credits, and who accumulate thirty years of creditable service, will not necessarily receive greater retirement benefits than other persons who are denied the right to purchase military service credits and, therefore, accumulate only twenty-six years

of creditable service. The only difference between the two groups is not, as petitioners state, that one was allowed to purchase the credits and the other was not. The Retirement System embraces a great variety of employees (See Ill. Rev. Stat., 1977, ch. 108½, § 16-106), and retirement benefits are based on many different salary scales. For petitioners to suggest that the statutory classification be invalidated because two persons *might* be identically situated, *might* have made identical contributions and *might,* therefore, realize equal retirement benefits, except for the statute, is absurd.

The classification of persons who were members of the System prior to entering military service and those who were not are clearly not arbitrary. Rather, they are based on substantial differences in circumstances and are obviously related to the objectives of the statute. For this reason also, petitioners have not sustained their claim of violation of equal protection.

CONCLUSION

For the foregoing reasons, respondents respectfully pray that the petition for writ of certiorari to the United States Supreme Court be denied.

Respectfully submitted,

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